

REMARKS

I. Summary of the Office Action

The Office Action mailed April 24, 2009 ("the Office Action") made the following objections and/or rejections, each of which is addressed in more detail below:

Claims 1, 3-16, and 18-29 were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

Claims 1, 3, 9-12, 16, 23-25, and 28-29 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0194115 ("Nordlicht") in view of U.S. Patent Application Publication No. 2003/0009387 ("Argust").

Claims 4, 7-8, 19, and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of U.S. Patent Application Publication No. 2002/0133447 ("Mastman").

Claim 18 was rejected under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of U.S. Patent Application Publication No. 2002/0147622 ("Drolet").

Claims 5-6 and 20-21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, further in view of Mastman, and further in view of Drolet.

Claims 13-15 and 26-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of U.S. Patent Application Publication No. 2002/0186826 ("Hsu").

II. Interview Summary

The Applicant thanks the Examiner for the telephonic interview on May 8, 2009 ("the Interview") with the Applicant's representative Adam Faier. The Applicant appreciates the Examiner's time in discussing the present application, the pending claims, the current rejections, and the cited art. While the Applicant generally agrees with the Interview Summary mailed on May 14, 2009, the substance of the Interview, including any agreements, is reflected herein.

During the Interview, the Examiner and the Applicant discussed potential amendments to address the pending rejections under 35 U.S.C. 101. In addition, after discussing the presently claimed invention and the cited art, the Examiner agreed that the cited art could be distinguished

but that the Applicant may need to make clarifying amendments to the claims. Based on that discussion, the Applicant is submitting the present Response.

III. Interview Request

If, after reviewing the present Response, the Examiner does not feel that a Notice of Allowance should be issued, the Applicant hereby expressly requests an interview with the Examiner in advance of preparation of an Office Action in reply to the present Response.

The Applicant believes that an interview may help achieve a mutual understanding between the Examiner and the Applicant and thereby advance the prosecution of the application. The Examiner is invited to contact the Applicant to schedule the interview at a date and time convenient to the Examiner and when the Examiner has had an opportunity to review the present Response.

The Applicant's representative Adam Faier may be reached at 312-698-6003, Monday-Friday, 9am-6pm Eastern.

IV. Related Applications

The Applicant understands that the Examiner reviews the claims and prosecution history of related applications as they contain common subject matter. To this end, the Applicant reminds the Examiner that the present application is related through a common claim of priority to U.S. Patent Application Serial No. 11/417,516.

In addition, for the purposes of the present application, the Applicant hereby rescinds any disclaimer of claim scope that may have been (or may be) made during the prosecution of any related application. The Applicant respectfully requests examination of the instant claims according to the claim language in light of the prior art without importing statements made by the Applicant in the prosecution of any related application.

V. Status of the Claims

The present application includes claims 1, 3-16, and 18-29. By this Response, claims 1, 4-7, 11, 16, 19-21, 24, and 28-29 have been amended and claims 9, 12, 18, and 25 have been cancelled. Claims 9, 12, 18, and 25 were cancelled without prejudice and disclaimer in order to

expedite prosecution and the Applicant expressly reserves the right to pursue the subject matter of the cancelled claims in a continuing application. The Applicant respectfully submits that no new matter has been added by these amendments.

VI. Claim Rejections – 35 U.S.C. 101

The Applicant now turns to the rejection of claims 1, 3-16, and 18-29 under 35 U.S.C. 101 as being directed to non-statutory subject matter. The Applicant respectfully disagrees that the examined claims were directed to non-statutory subject matter. However, in the interest of expediting prosecution, the Applicant has amended the pending claims to more clearly recite that they are directed to statutory subject matter. Therefore, the Applicant respectfully requests reconsideration and withdrawal of this rejection.

VII. Claim Rejections – 35 U.S.C. 103

The Applicant now turns to the rejection of claims 1, 3, 9-12, 16, 23-25, and 28-29 under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust. The Applicant respectfully submits that the proposed combination of Nordlicht and Argust does not teach or suggest the entirety of the features recited in the pending claims for at least the reasons discussed below.

Nordlicht has been discussed previously and for brevity that discussion will not be repeated here. The Office Action stated at page 6, and the Applicant agrees, that “Nordlicht does not show increasing at the electronic exchange the order quantity to an increased order quantity such that a possibility of the desired order quantity getting filled is increased.” In addition, the Office Action stated at page 10, and the Applicant agrees, that “Nordlicht in view of Mastman does not show estimating a potential order quantity that will be filled in the order queue at the price; and increasing the order quantity for the dynamic quantity order based on the estimated potential order quantity.” While the Applicant believes other features of the pending claims are also not disclosed by Nordlicht, the Applicant will focus on these features in this Response. The Office Action then turns to Argust to cure these deficiencies of Nordlicht.

Argust has also been discussed previously and for brevity that discussion will not be repeated here in its entirety. Argust generally relates to an online catalog product availability

updating system that pushes an availability date to the online catalog depending upon the status of capacity buckets in a scheduling application. Argust discusses a technique for managing an estimated shipment date for an online catalog by utilizing capacity buckets which represent, for a particular time period, the amount of product that can be accommodated in that time period. As orders are placed, a bucket is emptied of capacity, potentially increasing the estimate of the shipment date. Similarly, as more manufacturing capability becomes available, capacity can be added to a bucket, potentially lowering the estimate of the shipment date. These changes in the estimate of the shipment date are indicated to the online catalog through a push signal.

However, the Applicant respectfully submits that Argust does not teach or suggest estimating a potential order quantity at a price. In addition, the Applicant respectfully submits that Argust does not teach or suggest increasing the order quantity to an increased order quantity based on the potential order quantity. Rather, as discussed above, Argust is concerned with adjusting the capacity of a capacity bucket used for determining an estimated ship date. The capacity represents the amount of a product that can be provided for a particular time period. As orders are received, the capacity is decreased and as more manufacturing capability is increased, then the capacity of the bucket is increased. No mention is made in Argust of estimating a potential order quantity or increasing an order quantity based on the potential order quantity. Argust merely alters the capacity in a capacity bucket for making the estimate of the shipping date.

Accordingly, without conceding the propriety of the asserted combination, the Applicant respectfully submits that, even in view of the knowledge of one of ordinary skill in the art, Argust does not cure the deficiencies of Nordlicht discussed above.

The Applicant has amended the pending claims to clarify certain distinctions between Argust and the claimed invention as discussed in the Interview. Amended independent claim 1 recites “estimating by the computing device of the electronic exchange a potential order quantity at the price” and “increasing by the computing device of the electronic exchange the order quantity to an increased order quantity based on the potential order quantity.” Amended independent claims 16, 28, and 29 recite similar features. Nordlicht does not teach or suggest such features. Argust also does not teach or suggest such features. Thus, the proposed combination of Nordlicht and Argust cannot and does not teach or suggest the entirety of the features recited in the pending claims. Therefore, the Applicant respectfully submits that

independent claims 1, 16, 28, and 29 should be allowable over the cited art of record for at least the reasons discussed above.

With respect to claims 9, 12, and 25, these claims have been cancelled. With respect to claims 3, 10-11, and 23-24, these claims depend from independent claims 1 and 16. The Applicant respectfully submits that claims 3, 10-11, and 23-24 should be allowed for at least the reason that they each depend from an allowable claim.

The Applicant now turns to the rejection of claims 4, 7-8, 19, and 22 under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of Mastman. Mastman generally relates to establishing a stock portfolio wherein all of the stocks are selected by a computer program according to predetermined parameters and characteristics. The Applicant respectfully submits that Mastman fails to cure the deficiencies of Nordlicht and Argust discussed above. Thus, Applicant respectfully submits that the proposed combination of Nordlicht, Argust, and Mastman, does not teach or suggest the entirety of the features recited in the pending claims.

With respect to claims 4, 7-8, 19, and 22, these claims depend from independent claims 1 and 16. The Applicant respectfully submits that claims 4, 7-8, 19, and 22 should be allowed for at least the reason that they each depend from an allowable claim.

The Applicant now turns to the rejection of claim 18 under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of Drolet. Drolet generally relates to systems and methods for allowing organizations to receive, analyze, and respond to real-time information from supply chain partners through the monitoring of configurable supply chain parameters. The Applicant respectfully submits that Drolet fails to cure the deficiencies of Nordlicht and Argust discussed above. Thus, Applicant respectfully submits that the proposed combination of Nordlicht, Argust, and Drolet, does not teach or suggest the entirety of the features recited in the pending claims.

With respect to claim 18, this claim has been cancelled. Consequently, the Applicant respectfully submits this rejection is now moot and should be withdrawn.

The Applicant now turns to the rejection of claims 5-6 and 20-21 under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, further in view of Mastman, and further in view of Drolet. The Applicant respectfully submits that neither Mastman nor Drolet cure the deficiencies of Nordlicht and Argust as discussed above. Thus, the Applicant respectfully submits that the proposed combination of Nordlicht, Argust, Mastman, and Drolet, does not teach or suggest the entirety of the features recited in the pending claims.

With respect to claims 5-6 and 20-21, these claims depend from independent claims 1 and 16. The Applicant respectfully submits that claims 5-6 and 20-21 should be allowed for at least the reason that they each depend from an allowable claim.

The Applicant now turns to the rejection of claims 13-15 and 26-27 under 35 U.S.C. 103(a) as being unpatentable over Nordlicht in view of Argust, and further in view of Hsu. Hsu generally relates to automating aspects of offering a service upgrade to a service user based on an evaluation of the service user's utilization history and the system capacity. The Applicant respectfully submits that Hsu fails to cure the deficiencies of Nordlicht and Argust discussed above. Thus, Applicant respectfully submits that the proposed combination of Nordlicht, Argust, and Hsu, does not teach or suggest the entirety of the features recited in the pending claims.

With respect to claims 13-15 and 26-27, these claims depend from independent claims 1 and 16. The Applicant respectfully submits that claims 13-15 and 26-27 should be allowed for at least the reason that they each depend from an allowable claim.

VIII. Conclusion

In general, the Office Action made various statements regarding the pending claims and the cited art that are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (for example, if such statements should become relevant by appearing in a rejection of any current or future claim).

All the stated grounds of objection and rejection have been respectfully traversed, accommodated, or rendered moot. The Applicant therefore submits that the present application is in condition for allowance. If the Examiner believes that further dialog would expedite

consideration of the application, the Examiner is invited to contact Trading Technologies in-house Patent Counsel Adam Faier at 312-698-6003, or the undersigned attorney or agent.

Respectfully submitted,
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